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The Return (al-Radd)

The question of "return' arises only in the case of the sharers, because their shares are fixed and determined. At times they exhaust the whole estate (e.g. parents and two daughters, the parents receiving one-third, and two-thirds going to the two daughters), and on other occasions they do not exhaust it (e.g. a daughter and the mother, the former receiving half and the latter one-sixth).

In the latter case, the question arises as to what is to be done with the remaining one-third and to whom should we return it. In the event of there being no specific shares for the heirs (such as brot hers and uncles, who do not inherit as sharers) the question of return does not arise.

The four Sunni schools say: The excess of the sharers' shares is given to the residuaries. Hence if the deceased has a single daughter she will take half and the remainder goes to the father; and in his absence, to the full or consanguine sisters because they are residuaries with a daughter; and in their absence to the full brother's son; and in his absence to the consanguine brother's son; and then, in this order: the paternal uncle, the consanguine uncle and the paternal uncle's son. In the absence of all of them, the excess will be returned to the sharers in the proportion of their shares, except the husband and the wife, as they are not entitled to the return.

For example, if a decedent leaves behind mother and a daughter, the mother will take one-sixth and the daughter half as their respective shares, and the remainder will be given to them as 'return' by division into four parts, the mother receiving one-fourth and the daughter three-fourths. Similarly, if he leaves behind a consanguine and a uterine sister, the former will take the daughter's share and the latter the mother's share.

The Shafi'I and the Maliki schools say: If there is no residuary, the remainder, after the assignment of the sharers' shares, will escheat to the *bayt al-mal*.

The Imamiyyah observe: The sharers are entitled to the remainder in proportion to their shares by way of 'return' if there exists no relative in their category; and if such a relative exists, after the sharer takes his share the remainder will go to that relative (e.g. when the mother and the father are heirs, after the mother takes her determined share, the remainder shall go to the father).

If there exists with a sharer a relative who does not belong to his category, the sharer will take his share and then also the remainder by way of 'return' (e.g. when the decedent is survived by his mother and a brother, she, after taking one- third as a sharer, will take the remainder by way of 'return,' the brother receiving nothing because he belongs to the second category, while she belongs to the first category).

Similarly, if there exists a consanguine sister with a paternal uncle, she will inherit the first half as a share and the second half by way of 'return,' to the exclusion of the uncle, because he belongs to the third category while she belongs to the second category.

The Imamiyyah do not give the 'return' to a uterine brother or sister in the presence of a consanguine brother or sister. Hence if the decedent is survived by a uterine and a consanguine sister, the former is entitled to one-sixth and the latter to a half (as sharer) as well as the remainder by way of 'return,' to the exclusion of the uterine sister.

Yes, a uterine brother or sister is entitled to the 'return' if there is none belonging to their category, such as if the decedent is survived by a uterine sister and a consanguine paternal uncle, the whole estate will devolve on her to his exclusion, because he belongs to the third category, while she belongs to the second category.

The Imamiyyah also do not entitle the mother to the 'return' in the presence of those who prevent her from inheriting in excess of one-sixth. Hence if the deceased has a daughter and parents, and also brothers -- who exclude the mother from inheriting one-third-- the remainder will go only to the father and the daughter. But if there are no brothers to exclude the mother, the 'return' will be shared by the father, the daughter, and the mother in proportion to their shares.

It will be seen while discussing the inheritance of husband and wife, that the Imamiyyah entitle the husband and not the wife to inherit by way of 'return' in the absence of all other heirs apart from them.

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